2012 WL 5508525 (Md.App.) (Appellate Brief)
Maryland Court of Special Appeals.

Bryan Michael LANKFORD, Appellant,
v.
STATE OF MARYLAND, Appellee.

No. 1519.
September Term, 2011.
June 6, 2012.

Appeal from the Circuit Court for Caroline County (the Honorable Judge Dale R. Cathell Presiding with a Jury)

Appellant's Brief and Appendix

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***1 STATEMENT OF THE CASE**

Appellant Bryan Lankford was charged by criminal information in the Circuit Court for Caroline County on January 3, 2011. The charges were first degree assault, two counts of second degree assault, reckless endangerment, trespass on posted property, and endangering others while intoxicated (Md. Ann. Code, Art. 2b § 19-101). A jury trial was held on August 3-4, 2011, Judge

Dale Cathell presiding. The jury found Lankford not guilty of first degree assault of one *2 victim and not guilty of second degree assault of the second victim. Guilty verdicts were entered as to the remaining charges. On August 12, 2011, Judge Cathell sentenced Lankford to 10 years, all but 18 months suspended, followed by three years probation, for second degree assault. The remaining counts were merged.

QUESTIONS PRESENTED

1. Did the trial court err in denying Lankford's motion for judgment of acquittal by applying the wrong legal standard?

2. Did the trial court err in sustaining the State's objection to a question relevant to the victim's attitude toward Lankford where self-defense was an issue?

STATEMENT OF FACTS

This case arose out of an incident in the early morning hours of November 13, 2010. The location was the intersection of the driveway and the road at 2460 Guard Road in Federalsburg. On one side of the matter, as participants or witnesses, were Appellant Bryan Lankford, Chris Parks, and Matt White. On the other side were John Hicks, Jr. ("Hicks"), his son John Hicks, III, known as "Chip", James Little, Tristen Blake, and Brittney Willey. Little lived in the house at the 2460 Guard Rd. address. With him lived Lankford's ex-wife Kimberly Lankford, her son Tristan Blake, and at least two other children including Bryan and Kimberly Lankford's daughter. The **elder** Hicks lived in an outbuilding on the property. His son "Chip" was staying there along with his girlfriend, Brittany Willey, after a night of drinking around a bonfire. The **elder** Hicks had recently moved out of the farm where he lived with his estranged wife, Kimberly Hicks. The gist of the incident was that Lankford, Parks, and White had been out visiting *3 a couple of bars. That evening, the **elder** Hicks phoned and texted Lankford and his companions. When Lankford and Parks drove up Guard Rd. to return White to his residence next door, the **elder** Hicks was standing by his pick-up at the end of the driveway at 2460. A fight ensued, the details of which were disputed, as a result of which the **elder** Hicks was injured.

The State's first witness was James Little. Earlier in the evening, at the bonfire, Little was aware that after speaking with Chip, who had been on the phone with Lankford, Hicks "come unglued and got irate over the situation because he said he's got no right getting involved in my family's life." T 8/3/11 115. (In fact, Lankford had been telling Chip to call his mother, Kimberly Hicks, with whom he had had a falling out. Id. 133.) Little also observed Hicks call Lankford. Id. Little left the bonfire and went hoe to bed. Shortly after 2 am, Hicks called and said Lankford was on his way. Little got up, went to the living room, and watched what was going on. Lankford's Suburban had pulled up and Hicks's truck was at the end of the drive. Id. 116. According to Little Hicks and Lankford were yelling back and forth. Lankford followed Hicks, grabbed him from behind, threw him in the ditch. Climbed on top of him and beat him. Id. 118. Little said Lankford hit Hicks seven to ten times. Id. 119. Lankford then got up, looked around, and got back in his vehicle, which left, turned around at the next driveway, and came back. At that point, Lankford and Chris Parks walked around near where Hicks was lying in the ditch. By this time, Little had told Tristen to get Chip and was on the phone with 911. He then left his house, got a shotgun he kept in the *4 shed because he was prohibited from possessing firearms, id. 134-35, and fired two shots in the air behind the house. He then went to the end of the driveway where he saw Lankford holding Chip by the throat. Lankford hit Chip twice. When Little yelled at him, Lankford got back in his vehicle. Chris Ford approached Little but retreated to the vehicle when Little stuck the gun, which was now unloaded, in Parks's gut. Id. 120-21, 126. He, Chip, and Tristen placed Hicks in the back of the pickup. Id. 129. The ambulance arrived around 2:30 am. Id. 129. Hicks acknowledged that he had been charged with attempted murder on the applications of Lankford and Parks as a result of this incident and that the State's Attorney had dropped the charges. Id. 139-40.

Tristen Blake, age 14, was awakened at 2 am by his mother who was crying. *Id.* 144. He looked out from the living room and saw Lankford in the ditch, both hands flying. He grabbed a kitchen knife, ran to the back of the farm, awakened Chip and Brittany, and told Chip he needed to go help his father who was getting beaten up. *Id.* 144-45. When Chip ran up to the ditch,

Lankford grabbed him by the throat and hit him in the head two or three times. *Id.* 146. Little then came out of the house yelling. Blake and Chip then got Hicks out of the ditch and put himin the pickup. *Id.* 147. He dropped the knife in the grass. *Id.* 148.

Chip Hicks testified that he was awakened the night of the bonfire by *Tristen Blake*. Id. 162. He ran to the end of the driveway where he saw his father lying in the ditch. *Id.* 163. Lankford's Suburban was also there. *Id.* 164. He looked down at his father. When he looked back up, Lankford grabbed him by the throat ***5** and hit him 3-4 times on the side of the head. *Id.* 165. Lankford was then restrained by Parks and Matt White. Id. 166-67. After two gunshots were heard, Little came out and told the men to leave, which they did. Id. 168. He then put his father in the pickup and backed it down to the house. *Id.* 169. Chip acknowledged that he had spoken by phone with Lankford earlier and that Lankford was encouraging him to make up with his mother, Kim Hicks. *Id.* 171-72. He agreed his father was angry at Lankford and did not want him involved in family business. *Id.* 172. Hicks had asked Chip for Lankfor's phone number, but Chip did not give it to him. He did not want Hicks to argue with Lankford. *Id.* 173. Chip said that Hicks owned at least two pistols, and had one by his bedside for protection. Id. 177-79.

Brittany Willey testified to having been awakened and running to the end of the driveway with Tristen behind Chip to where Hicks was unconscious. Id. 187-88. Lankford grabbed chip by the neck and hit him on the side of the head. *Id.* 189. Chris Parks said “it's Chip, its chip, get off.” Then Little came out and fired off two (or more, id. 195) rounds in the air, whereupon Lankford jumped in his vehic” and said, “we need to get out of here because this MF‘er is crazy.” *Id.* 190-91. Before he hit Chip, Lankford was standing at the end of the driveway. Parks was standing by the door of the Suburban and there was another man inside. *Id.* 192.

Maryland State Trooper Walter Johnson was dispatched to 2460 Guard Rd. a little after 2 am on November 13, 2010, arriving at 2:26 am. Id. 201. ***6** Federalsburg officers Stivers and Hubbard were on the scene. Id. In the back of a pickup truck he observed an unconscious person with multiple facial injuries. He covered the man with blankets for shock and took photographs. Id. 202. A Medivac helicopter was called and Hicks was transported for treatment. Id. 204. Trooper Johnson observed a “no trespassing” sign on a pole next to the ditch. He found a Copenhagen chewing tobacco can in the driveway a foot off the road. About 7 feet from the road he saw a kitchen knife with a couple of drops of blood next to it. A “Tractor Supply” hat was in the same area. Id. 205-06. Christopher Parks returned to the scene. Trooper Johnson took a statement from him. Id. 217-18. Trooper Johnson later attempted to contact Matt White several times and ways but was unsuccessful. Id. 218. However, that night, he did get a statement from White, who said that Hicks said he was going to shoot him. Id. 229-32. Trooper Johnson photographed Lankford at the barracks that morning. He observed injuries to Lankford's right hand. Id. 221. Lankford's eyes were bloodshot and glassy and Trooper Johnson detected a strong odor of alcoholic beverage on his breath. Id. 224. From Lankford's truck, Trooper Diggs recovered a .32 caliber semi-automatic handgun, loaded with an 8-round magazine. Id. 234-35.

Trooper Drew Harper testified that at 2460 Guard Rd. on November 26, 2010, Hicks's son Trey gave him Hicks's cell phone and he photographed three text messages from relevant to the case. Id. 246-47.

John Hicks, Jr. (“Hicks”) testified that as of November 13, 2010 he was living on the Guard Rd. property, but not in the main house, which he had rented ***7** out. He had separated from his wife on November 1st. *Id.* 249. He did not remember anything of the night of the 13th. *Id.* 252-53. Specifically, he did not recall having called Lankford that night. *Id.* 261. Hicks elaborated on his various ailments before the incident, including a open heart surgery and a stroke, and on his injuries and disabilities as a result of the incident. *Id.* 251-55. Hicks identified the gun found in Lankford's truck as a gun his father had given him and which he had taken with him when he moved away from his wife back to Guard Rd. *Id.* 258-59.

Chris Parks testified that on November 12, 2010, he, Matt White, and Lankford went out to several bars. Id. 265-66. Over the course of the evening, he had phone conversations with Chip and Hicks. Id. 267. Before they went out, Chip had asked to come along, but Parks said no because of his youth. Id. 289. Around midnight, Hicks called asking Parks to come over to drink, but he declined. Hicks later texted him and also talked to Lankford and White on the phone. Id. 268. After leaving the last bar around 1:30, with Parks driving, they drove to Guard Rd. to take White home. Id. 270. He saw Hicks at the end of his driveway. Parks knew Hicks had a bad drinking problem at the time so Parks was sure he was intoxicated. Id. 291. They continued to White's

house. White got out and walked back down the road toward Hicks, about 50 yards away. Id. 271. Parks sent a text message to Hicks informing him White was coming, drove back to where White and Hicks were arguing, and tried to get White to get back in the vehicle. Lankford stayed in the vehicle; he said his daughter was in that house and he did ***8** not want any confrontation. Id. 272-75, 294. Hicks and White were threatening to kill each other. Id. 293. At some point he realized Hicks had a gun in his hand by his side. Id. 276-77. It was seconds after Parks saw the gun that he saw Lankford hit Hicks. Id. 278-79, 293. Parks could not remember how many times Lankford hit Hicks. He believed, but was not sure, that Lankford stopped when the gun was released. Id. 279, 293, 302. Lankford was on top of Hicks when Parks went to get him. Id. 279. He saw a gun lying next to Hicks, picked it up, and put it in their vehicle. Id. 280. They then got in the vehicle and started to drive White home. However, they stopped for Lankford to look for his cell phone. Id. 283-84. When that seemed to be taking too long, Parks got out and saw Lankford and Chip in an altercation. Id. 285. Parks intervened, saying “it's Chip, its Chip”. Id. 295. Then he heard “roughly three” gunshots, id. 296,3 and Little put the barrel of a shotgun in his stomach and told him to leave. Id. 285-86, 297. They got back into the vehicle and left, dropped white off, and went to Lankfor's house. Id. 286. On the way, Lankford told him he was worried Parks had been shot. Id. 288. From there, he had a friend pick him up and take him home. Id. 287. He drove his own truck back to Guard rd. to talk with Chip and see if everything was alright. Id. 287.

Several witnesses testified in Lankford's defense. The first was Kimberly Hicks, John Hicks's estranged wife. Ms. Hicks testified that in November 2010, their marriage of more than 20 years ended due to Hicks's drinking and other problems. T 8/4/11 11. He was asked to move off the farm where they lived, and he moved to the Guard Rd. property. Id. 12. Ms. Hicks said Hicks took the pistol ***9** his father had given him. Id. 13. Two of her sons, Ryan and Trey, stayed on the farm. Chip went to live with Hicks after chip and his mother had a disagreement over a horse. Id. 14. On the evening of November 12, 2010, Hicks called her. Id. 15. He was angry and jealous and appeared to be intoxicated. She did not give him Lankfor's phone number. Id. 15-17. Lankford was a friend of Ms. Hicks's cousin, Sherry Trice/Upton, and her sons Trey and Ryan each lived with Lankford or on his property at some point. Id. 20-21.

Christopher Parks was recalled as a witness for the defense. He reiterated that in the early morning hours of November 13, 2010, he saw Hicks with a gun, that he believed hicks was capable of shooting him, and that he was in fear. On cross examination, however, he acknowledged having said several times previously that Hicks did not point the gun and would never point a gun. Id. 23-24.

Lankford testified in his own defense. He, Parks and Matt White went out the evening of November 12, 2010. *Id.* 35. Chip Hicks had called asking if he could go with them, but Lankford said no. He also told Chip he needed to apologize to his mother. Later, Sherry Upton/Trice called Lankford saying Hicks was asking for his number. *Id.* 36-37. Hicks then called multiple times, drunk, agitated, and argumentative, saying he was going to kill Lankford. On one call, Matt White took the phone and started arguing with Hicks. *Id.* 38-39. The last three calls came shortly before 2 am when they were almost to Matt White's house on Guard Rd. *id.* 39. As they drove past Hicks's driveway, he was in front of his pickup out in the road waving his arms and yelling. White rolled down the ***10** window and yelled back. Lankford told Parks, who was driving, “take this fool home. I said my daughter lives in that home.” *Id.* 40. (Lankford was not driving because he had had two drinks and did not want to jeopardize his CDL license. *Id.)* When they dropped Matt White off at his house, he ran back down the road. *Id.* 40-41. Parks wanted to go get White. Lankford did not want to get involved. He said okay, but he was going to stay in the car. Id. 44. Parks stopped the car about thirty feet away, got out, and got in between Hicks and White. Then Lankford saw Hicks go to the back of his truck and pick something up. Parks had his back to Hicks and was moving White back to his vehicle while White was still arguing and flailing his arms. *Id.* 45-46. Hicks pointed a pistol at Parks and White. It was the same pistol introduced into evidence and identified as the one Hicks's father had given him. *Id.* 47. Lankford got out of his vehicle, hit Hicks, and grabbed his right arm with his left hand. Hicks had the gun in his right hand. *Id.* 47-48. Lankford hit Hicks once more. The gun fell from his hand, and Lankford kicked it into the road. He turned around to Parks and White and told them to get in the vehicle. Then he was jumped from behind. He started to defend himself, thinking it was Hicks, *id.* 56, then heard Parks saying, “It's Chip. It's Chip.” Lankford stopped and Parks grabbed Chip. Then Little came out of the house yelling, l kill you Bryan Lankford.” Five shots were fired in the direction of the vehicle. Lankford took cover with the pistol behind the vehicle. Little put the barrel of the gun into Parks, who used Chip as a shield. *Id.* 48. Lankford said he had his cell phone the entire time, and that once they left he did

not return. They ***11** were being shot at when he got Parks and White in the vehicle. Parks was holding his stomach. Lankford thought he had been shot. They drove up the road to a property Lankford owned and stopped to try to get in touch with Sherry Upton/Trice to get in touch with Kim Hicks to let her know what had happened. *Id.* 49, 55. Lankford testified that he did not see Tristen Blake and his girlfriend Brittany out there that night and that their stories were fabricated. Id. 49. When Lankford got home, Trooper Diggs was there. He told the trooper what had happened. *Id.* 51. Later he swore out charges against Hicks and Little, but they were dismissed by the State. *Id.* 52. Lankford denied telling Trooper Diggs that he "fucked him up." Id. 69.

In rebuttal the State called Trooper Diggs who testified that around 2:50 am he spoke with Lankford at Lankford's residence. Lankford said Hicks had called several times accusing him of sleeping with his wife. Lankford said he told Hicks he would be in the area of Hicks's residence later. When they got there, White got out and confronted Hicks. Hicks got a handgun from his truck. According to Diggs, Lankford said that he then got out of his vehicle and "fucked him up", referring to Hicks, by hitting him three times until he dropped the gun and fell to the ground. *Id.* 86-87. Lankford said he was then grabbed. He thought it was Hicks so he hit the person again. He stopped immediately when someone aid it was Chip. *Id.* 48. Diggs also said he recovered the handgun involved from Lankford's glovebox. *Id.* 87.

***12** Tropper Johnson was also recalled. He said that when Parks gave his written statement, he did not appear to be intoxicated. Id. 92.

James Little was recalled to reiterate that after Lankford's Suburban left following the alleged assault, it turned around and came back. *Id.* 94. Lankford and Parks got out of the vehicle. Little saw Lankford with his hand on Chip's throat, and saw him hit Chip twice. *Id.* 95.

Finally, the State recalled Chris Parks in rebuttal to reaffirm that after leaving they returned to look for Lankford's cell phone. Id. 98.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING LANKFORD'S MOTION FOR JUDGMENT OF ACQUITTAL BY APPLYING THE WRONG LEGAL STANDARD.

In denying Lankford's motion for judgment of acquittal at the end of the State's case, the trial court said:

> Okay. I'm going to deny the motion at this time. We'll see what happens with the rest of the trial. You all, the Defendant chose a jury trial. The jury trial right now is the finder of fact and I don't have enough, uh, evidence favorable to the Defendant to take it away from the jury at this point.

T 8/4/11 9. It is evidence that the trial court applied an incorrect legal standard.

In *Neal v. State*, 191 Md. App. 297, 314-15, 991 A.2d 159, 169, *cert. denied*, 415 Md. 42, 997 A.2d 792 (2010), this Court summarized the legal standards for appellate review of the denial of a motion for judgment of acquittal for insufficiency of the evidence:

***13** The standard for our review of the sufficiency of the evidence is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); see *White v. State*, 363 Md. 150, 162, 767 A.2d 855 (2001). We defer to the fact finde's "opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence ... ." *Sparkman v. State*, 184 Md. App. 716, 740, 968 A.2d 162, *cert. denied*, 410 Md. 166, 978 A.2d 246 (2009); *Pinkney v. State*, 151 Md. App. 311, 329, 827 A.2d 124, *cert. denied*, 377 Md. 276, 833 A.2d 32 (2003). While we do not re-weigh the evidence, "we do determine whether the verdict was supported by sufficient evidence,

direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." White, 363 Md. at 162.

The same review standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts. *See Pinkney*, 151 Md. App. at 327; *Eiland v. State*, 92 Md. App. 56, 69, 607 A.2d 42 (1992), *rev'd on other grounds*, 330 Md. 261, 623 A.2d 648 (1993). "Circumstantial evidence is entirely sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Hall v. State*, 119 Md. App. 377, 393, 705 A.2d 50 (1998).

Furthermore, the fact finder, not the appellate court, resolves conflicting evidentiary inferences. "The primary appellate function in respect to evidentiary inferences is to determine whether the trial court made reasonable, i.e., rational, inferences from extant facts. Generally, if there are evidentiary facts sufficiently supporting the inference made by the trial court, the appellate court defers to the fact-finder..." *Smith v. State*, 374 Md. 527, 547, 823 A.2d 664 (2003).

***14** However, the issue here is not whether the trial court reached the wrong decision, but whether it even applied the correct standard in addressing the issue. Implicit in the above-stated standard of review is the proposition that in deciding whether to send a criminal case to the jury after the close of the State's case, the trial court must decide whether the State has produced evidence from which a rational fact-finder could find all the elements of the offense to have been proven beyond a reasonable doubt. *See, e.g., Coleman v. State*, 423 Md. 666, 672, 33 Md. App. 468, 471 (2011); *Rich v. State*, No. 2339, Sept. Term 2009 (Ct. of Special App. May 31, 2012), slip op. at 5. This standard incorporates the bedrock legal principle that the burden of proof in a criminal case always rests on the State. *Mullaney v. Wilbur*, 421 U.S. 684 (1975). The operative question is whether the State has carried this burden, assuming the jury chooses, as is its right, to give the State's evidence maximum credibility and weight and to draw all reasonable inferences in the State's favor.

Instead, in this case, the trial court expressly denied Lankford's motion for judgment of acquittal at the end of the State's case because there was not enough evidence favorable to the defendant to take the case from the jury. In essence, the trial court denied the motion for judgment of acquittal not because the State had carried its burden but instead because the defendant had not. Because the trial court addressed the wrong question in denying Lankford's motion for judgment of acquittal, this denial was legally incorrect and should be reversed.

***15 II. THE TRIAL COURT ERRED IN SUSTAINING THE STATE'S OBJECTION TO A QUESTION RELEVANT TO THE VICTIM'S ATTITUDE TOWARD LANKFORD WHERE SELF-DEFENSE WAS AN ISSUE.**

In cross-examination of Chip Hicks, defense counsel was attempting to establish that the witness's father, the **elder** Hicks, bore toward Lankford related to Hicks's estranged wife, Kim Hicks. After establishing that Hicks was angry that Lankford was speaking with Chip about Chip's argument with his mother, and after establishing that Kim Hicks and Hicks had recently separated, defense counsel asked whether there "was some rumor going around that, uh, Mr. Lankford had danced with your mom, right?" T 8/3/11 172. [1] The State objected. Defense counsel argued that she was "not offering it for the truth, I'm offering it for what he and the others in the household, uh, believed." The trial court sustained the objection. Defense counsel went on the get the witness to admit his father was angry at Lankford and did not want him in the family's business, but the witness denied that Hicks was jealous of Lankford. *Id.*

The trial court's ruling was incorrect and an **abuse** of discretion. While ordinarily rulings on admissibility of evidence are reviewed for **abuse** of discretion, there are limits to the trial court's discretion, such as where the trial court unduly limits the defendant's cross-examination of State witnesses to challenge credibility and establish bias. ***16** Martin v. State, 364 Md. 692, 697-98, 775 A.2d 385, 388 (2001). The evidence sought to be elicited in this case was that there was a rumor, presumably known

to Hicks and Chip, to the effect that Lankford was to some extent romantically involved with Hicks's wife, Chip* mother, from whom Hicks was very recently separated and with whom Chip had had an argument.

Unless otherwise excluded, "all relevant evidence is admissible." Md. Rule 5-402. This evidence was relevant because it served to bolster the defense theory that Hicks was not only intoxicated, but that he had very personal reasons for being particularly angry toward Lankford, thereby strengthening Lankford's self-defense claim. *See Simmons v. State*, 313 Md. 33, 41, 542 A.2d 1258, 1261 (1988) (defendant permitted to introduce evidence relevant to asserted defense); *Thomas v. State*, 301 Md. 294, 306, 483 A.2d 6, 12 (1984), *cert. denied*, 470 U.S. 1088 (1985)(where defendant raises self-defense, evidence of victims propensity and reputation for violence admissible). The evidence was also relevant to establish bias on the part of the witness Chip against Lankford for possibly coming between his father and his mother.

Moreover, the evidence was not hearsay inadmissible under Md. Rule 5-802. Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." As counsel stated, it was not offered to prove the fact that Lankford actually did dance with Kim Hicks, but rather to prove only that Hicks and Chip believed that she did. Defense counsel should have been permitted to ***17** elicit this evidence and place it before the jury for their consideration in Lankford's defense. Smith v. State, 423 Md. 573, 595, 32 A.3d 59, 72 (2011)(**abuse** of discretion to exclude relevant evidence).

CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court reverse the judgment of the court below.

Footnotes

1 Obviously, counsel had a good faith basis for asking this question because the witness answered it affirmatively before the State objected. T 8/3/11 172.

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